American Bankers Association
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Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

re: National Credit Union Administration; Corporate Credit Unions; 12 C.F.R. Parts 701, 704, and 741; 75 Federal Register 228, November 29, 2010

Dear Ms. Rupp:

The National Credit Union Administration (NCUA) Board (the Board) issued proposed amendments to its rule governing corporate credit unions (corporates). Among the proposed amendments is a provision for the equitable sharing of Temporary Corporate Credit Union Stabilization Fund (TCCUSF) expenses among all members of corporates, including federally-insured credit union (FICU) and non-FICU members. The American Bankers Association (ABA)[1] is opposed to the proposed amendment as it shifts a portion of the cost associated with the TCCUSF from FICUs to non-FICUs.

ABA contends that:

- the real beneficiaries from the creation of the TCCUSF are the National Credit Union Share Insurance Fund (NCUSIF) and FICUs;
- the proposed amendment exceeds the agency's statutory authority; and
- the proposed payment by existing non-FICUs to the TCCUSF is not voluntary.

Background

Section 204(f) of Helping Families Save Their Homes Act of 2009[2] authorized the establishment of the TCCUSF by amending Title II the Federal Credit Unions Act. The TCCUSF would authorize NCUA to borrow up to $6 billion from the Treasury on a revolving basis. The TCCUSF must repay to the Treasury, with interest, all amounts borrowed, but the Fund would have the discretion as to the timing of each repayment and the amount of principal included with each repayment. The Fund would make assessments on FICUs as it determined necessary to make each repayment. The TCCUSF must be shut down seven years after its initial borrowing from Treasury, but it can be extended with the prior concurrence of the Secretary of the Treasury.

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.
[2] Public Law 111-22.

NCUA is proposing to add a new section (Section 704.21) to its corporate credit union regulations. The new Section 704.21 provides that when the NCUA Board assesses a TCCUSF premium on FICUs, NCUA will request existing non-FICU members to make voluntary payments to the TCCUSF. In the event one or more of these non-FICUs declines to make the requested payment, or makes a payment in an amount less than requested, the proposal requires the corporate credit union to conduct a member vote on whether to expel that non-FICU.

The proposed amendment defines non-FICU to mean every corporate member that is not insured by the NCUSIF. Trade associations, CUSOs, non credit union cooperatives, banks, insurance companies, and privately insured credit unions are examples of entities that might be members of certain corporates and fall within the term "non-FICU."

NCUA justifies the proposed amendment contending that every member of a corporate credit union benefitted from its actions to stabilize the corporate credit union system. The Board states that non-FICU members have not paid, and likely will not pay in the future without some encouragement, their fair share of the expenses. The proposal is meant to encourage existing non-FICU members to pay their "fair share" of such expenses. Moreover, NCUA states that 12 U.S.C. 1772a gives NCUA the authority to accept gifts for carrying out any of its functions under the Federal Credit Union Act.

ABA's Position

ABA opposes the proposed amendment as it shifts a portion of the cost for the TCCUSF from FICUs to non-FICUs, and ABA recommends that NCUA not adopt the proposed new Section 704.21.

ABA makes three points supporting its position:

- the creation of the TCCUSF directly benefited the NCUSIF and FICUs, not non-FICUs;
- the proposed amendment exceeds the agency's statutory authority; and
- the proposed payment by existing non-FICUs to the TCCUSF is neither a gift nor is it voluntary.

TCCUSF Benefitted FICUs and NCUSIF, Not Non-FICUs

While NCUA claims that every corporate member benefited from its actions to stabilize the corporate credit union system, the real beneficiaries from the creation of the TCCUSF are FICUs and the NCUSIF.

If it were not for the creation of the TCCUSF, FICUs would have been confronted with a huge one-time assessment associated with NCUA's efforts to stabilize the corporate credit union network and the conservatorships of U.S. Central and Western Corporate Federal Credit Unions. FICUs in 2009 were facing a one-time assessment of 99 basis points to restore the NCUSIF back to its normal operating ratio of 1.30 percent of insured deposits – 69 basis points for a write down of the one percent NCUSIF capitalization deposit and a premium assessment of 30 basis points. Testifying before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit on May 29, 2009, NCUA Chairman Fryzel stated that the 99 basis point cost to FICUs would equate to a 72 basis point reduction in each credit union's return on assets and 65 basis point reduction in net worth.[3]

Moreover in a June 2009 letter to FICUs, NCUA points out how both the NCUSIF and FICUs benefited from the creation of the TCCUSF. The TCCUSF "allows the Board to improve the NCUSIF's equity ratio to better position the NCUSIF to cover future insurance losses. Essentially, it means insured credit unions will not bear a significant, current, concentrated, onetime burden for stabilizing the corporate system."[4] The focused benefit on FICUs could not have been stated more clearly.

Non-FICU members of corporates, however, did not face this one-time assessment. Non-FICUs did not benefit from shifting the obligation of resolving failed corporate credit unions from the NCUSIF to the TCCUSF and from the spreading out of the cost associated with corporate resolutions over a number of years. Therefore, the proposed amendment requesting non-FICUs to share in the TCCUSF expense seeks to redistribute a portion of the cost associated with resolving failed corporate from FICUs to non-FICUs, although FICUs and the NCUSIF are the real beneficiaries .

Congress Intended for FICUs to Bear the Cost of the TCCUSF

The statutory language makes it clear that ***only*** FICUs are to be assessed to repay advances to the TCCUSF. Section 217(d) of the Federal Credit Union Act addresses assessments to repay advances and states—

> At least 90 days prior to each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment, ***the Board shall assess each federally insured credit union a special premium*** due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment. The premium charge for each credit union shall be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage shall be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 202. [Emphasis added]

Congress clearly intended for FICUs to be responsible for the repayment of advances to the TCCUSF from the Treasury. The statutory language does not say that the NCUA may assess non-FICUs.

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[3] Statement of Michael E. Fryzel, "H.R. 2351, The Credit Union Share Insurance Stabilization Act," The U.S. House of Representatives, Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit Wednesday, May 20, 2009.

[4] http://www.ncua.gov/Resources/CorporateStabilization/2009/LTCUs%2009-CU-14%20Corp%20Stabilization%20Fund%20Implementation.pdf

Furthermore, NCUA claims that it has the authority to request such voluntary payments from non-FICUs, because 12 U.S.C. 1772a gives NCUA the authority to accept gifts for carrying out any of its functions under the Federal Credit Union Act. Once again, NCUA's reasoning is misguided. A gift is something voluntarily transferred without compensation. This requested payment is not a gift, but rather it is a required payment to NCUA for the right of non-FICUs to continue to be members of corporates.

Payment Is Not Voluntary

ABA believes that the proposed requested payment is not voluntary; but rather that the NCUA is using its power to coerce payments from non-FICUs to benefit FICUs.

The proposed new section 704.21 states that "when the NCUA Board imposes a TCCUSF premium assessment on FICUs, a corporate credit union must furnish to NCUA information about all its non-FICU members. NCUA will then request each of these non-FICU members to make a voluntary premium payment to the TCCUSF in an amount calculated as a percentage of the non-FICU member's previous year-end assets. In the event one or more of these non-FICUs declines to make the requested payment, or makes a payment in an amount less than requested, the proposal requires the corporate conduct a member vote on whether to expel that non-FICU."

NCUA writes that non-FICU members will not likely pay ***without some encouragement***. [Emphasis added] To spur this supposed voluntary payment, non-FICUs are faced with potential threat of expulsion from their corporates if the requested payments are not made.

However, NCUA portrays itself falsely as an innocent by-stander and not influencing the actions of non-FICUs regarding the fictitious voluntary payments. NCUA wrote that it "does not ultimately make the determination of whether a non-FICU should make a payment to the TCCUSF or the amount of the payment. The non-FICU makes that determination. NCUA also does not make the determination of the adequacy of any payment. The members of the affected corporate make that determination when deciding whether or not to expel the non-FICU member."

To call such a premium payment "voluntary" is a sham. In fact, NCUA is sending an invoice to non-FICUs and establishing a procedure to extort payments using penalties for non-compliance. If the non-FICU does not pay up the requested amount, the corporate is required to hold a special meeting of the members to vote on the expulsion of the non-paying, non-FICU member. Non-FICUs are being conscripted into making this payment.

Conclusion

ABA is opposed to NCUA's proposed new Section 704.21 and recommends NCUA not adopt this part of the proposed rule. This section seeks to redistribute part of the cost of the TCCUSF from FICUs to non-FICUs, although the beneficiaries of the creation of the TCCUSF were FICUs and the NCUSIF. Furthermore, the statutory language that created the TCCUSF clearly shows that Congress intended for FICUs to repay the advances for the TCCUSF. Finally, NCUA's claim that such requested payments from non-FICUs are voluntary is disingenuous, especially when not paying the requested amount may expose a non-FICU to penalties, including the threat of expulsion from its corporate credit union.

Sincerely,

Keith Leggett
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